the auditor filed a bill in the circuit court for the apppointment of a receiver, for the dissolution of the bank and the winding up of its affairs, and for an injunction restraining Fetzer from further administering upon the estate, and that he be ordered to surrender possession of the bank and its assets. *Held* (HAND, C.J., and VICKERS, J., dissenting), that the bill was insufficient in that it failed to allege that the auditor gave the proper thirty days' notice as required under Hurd's Rev. St. 1905, ch. 16a, § 11. *People ex rel. McCullough, Auditor,* v. *Milwaukee Avenue State Bank et al.* (1907), — Ill. —, 82 N. E. Rep. 853.

Hurd's Rev. St. 1905, ch. 16a, § 11, provides that the Auditor of State shall give thirty days' notice to the president of a bank to have the impairment of its capital stock made good by the stockholders, or a reduction of the stock, and that should neither be done, the auditor shall sue the stockholders, or, if the conditions so warrant, have a receiver appointed to wind up the affairs of the bank. The bill was held insufficient upon the ground that the giving of notice is a condition precedent to both the suit against the stockholders and the bill for the appointment of a receiver. The contention of the attorney-general as well as the view expressed in a strong dissenting opinion is that notice has no application to the suit in equity, but is limited to actions at law against the stockholders. This view is based upon the ground that a careful analysis of the entire section discloses marked differences in the two remedies, both in the means to be employed and the objects to be attained; the action at law being a suit against each stockholder "for the use of said bank," while the bill in equity is not a suit for the use of the bank, but its manifest purpose is to take the control of the bank out of the hands of its officers and place it under the direction of a court of equity. To require a notice of thirty days in the latter case, it is urged, would not only defeat the legislative intent but would work great injustice both to the banks and their patrons. The case, however, seems to have been correctly decided.

BILLS AND NOTES—FOREIGN BILL OF EXCHANGE—FAILURE TO PROTEST.—A foreign bill of exchange was indorsed by the drawers to bankers in New York, who sent it to their agent in Vienna to collect. The agent failed to demand payment in accordance with the laws of New York, and failed to protest the same on the refusal of the drawees to pay, or to give notice of such protest to the drawers as required by the laws of New York. *Held* (VANN, J., dissenting), that the drawers were discharged from any liability, though under the laws of Austria the instrument was a mere commercial order for money of which no protest need be made. *Amsinck et al.* v. *Rogers et al.* (1907), — N. Y. —, 82 N. E. Rep. 134.

The contract of the drawer of a bill of exchannge is governed by the law of the place where the bill is drawn, in regard to the rights of the payee and any subsequent holder, and not by the law of the place of payment by the acceptor. *Crawford* v. *Branch Bank,* 6 Ala. 12; *Freese* v. *Brownell,* 35 N. J. L. 285; *Kuenzi* v. *Elvers,* 14 La. Ann. 391; *Bank of United States* v. *United States,* 2 How. (U. S.) 711; *Raymond* v. *Holmes,* 11 Tex. 55; *Hunt* v. *Stan-*

dart, 15 Ind. 33; *Allen* v. *Kemble,* 6 Moore P. C. 314. This is so since the contract of the drawer is to pay the bill in the place where it is drawn, in case of the failure of the drawee to accept it, and not to pay it in the place where the drawee resides. *Woods* v. *Gibbs,* 35 Miss. 559. It follows that the right of the drawer to protest and notice must be governed by the above rule. *Thorp* v. *Craig,* 10 Iowa 461; *Williams* v. *Putnam,* 14 N. H. 540; *Raymond* v. *Holmes,* 11 Tex. 55; *Carroll* v. *Upton,* 2 Sandf. (N. Y.) 171, affirmed 3 N. Y. 272. This doctrine, although sustained by the great weight of authority, has not escaped criticism and dissent. *Shanklin* v. *Cooper,* 8 Blackf. (Ind.) 42, but later overruled, 15 Ind. 33; *Peck* v. *Mayo,* 14 Vt. 33; 1 DANIEL, NEG. INST. (5th Ed.), § 901; 2 KENT COMM. 459, 460; 2 PARSONS, NOTES AND BILLS, 347. The decision in the principal case seems to be in accord with the earlier New York authorities, which are fully discussed in the opinion.

CONSTITUTIONAL LAW—EQUAL PROTECTION OF THE LAW—REGULATION OF COMMON CARRIER.—The defendant in error brought an action to collect a penalty for the failure of the plantiff in error to adjust and pay a claim for an intrastate shipment, under the provisions of a statute of South Carolina (24 Stat. at L. 81), requiring common carriers to adjust and pay every claim for loss or damage to an intrastate shipment within forty days, and within ninety days in case of shipments from without the state, after the filing of such claim, under penalty of $50 for each failure or refusal, provided, that unless such consignee recover in such action the full amount, no penalty shall be recovered. *Held,* common carriers are not denied the equal protection guaranteed under the Fourteenth Amendment to the United States Constitution, by the provisions of this statute. (Mr. Justice PECKHAM dissents.) *Seaboard Air Line Railway* v. *A. L. Seegers and W. B. Seegers* (1907), 28 Sup. Ct. Rep. 28.

The state legislatures may classify subjects of legislation, conferring rights or imposing burdens on the created class, but such classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without such basis. *Kane* v. *Erie R. Co.,* 133 Fed. 681. While this principle is well recognized, it is exceedingly difficult to apply, and the distinctions made in the decided cases often seem rather obscure. A penalty imposed for a railroad's failure to fence its right of way, payable to the individual injured, is valid. *Missouri Pacific R. R.* v. *Humes,* 115 U. S. 512. Also, an act requiring a railroad to pay reasonable attorney fees in suits brought for damage by fires has been sustained. *Atchison, Topeka & Santa Fe R. R. Co.* v. *Matthews,* 174 U. S. 96. On the other hand, a stipulation requiring a railroad to pay attorney fees as part of the judgment rendered against it for killing live stock was held to be an unreasonable classification. *Gulf, Colorado & Santa Fe R. Co.* v. *Ellis,* 165 U. S. 150. The tendency seems to be, however, to sustain the validity of such laws, where the classification is reasonable and the burdens imposed on the class are related to some of the peculiarities of such class. *Vogel* v. *Pekoc,* 157 Ill. 339; *Schimmele* v. *R. R.,* 34 Minn. 216; *Fidelity Mutual Life Insurance Association* v.